

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANDRE CORTEZ BROWN,

Defendant-Appellant.

UNPUBLISHED

December 20, 2011

No. 301789

Kent Circuit Court

LC No. 08-006288-FC

Before: MARKEY, P.J., and FITZGERALD and BORRELLO, JJ.

PER CURIAM.

Defendant, Andre Cortez Brown, appeals by right his convictions for armed robbery, MCL 750.529; conspiracy to commit armed robbery, MCL 750.157a and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant was sentenced as an habitual offender, fourth offense, MCL 769.12, to 33 to 50 years' imprisonment for both the armed robbery and conspiracy to commit armed robbery convictions and two years' imprisonment for the felony-firearm conviction. We affirm.

Defendant's sole argument on appeal is that he was denied his right to self-representation. We disagree. A trial court's factual findings regarding a defendant's request to represent himself are reviewed for clear error. *People v Russell*, 471 Mich 182, 187; 684 NW2d 745 (2004). A trial court's ultimate decision whether to allow a defendant to represent himself is reviewed for an abuse of discretion. *People v Hicks*, 259 Mich App 518, 521; 675 NW2d 599 (2003). But we review de novo the trial court's decision regarding self-representation to the extent it implicates "interpretation of the law or the application of a constitutional standard to uncontested facts[.]" *Russell*, 471 Mich at 187.

The right of self-representation is secured by both the Michigan Constitution, Const 1963, art 1, § 13, and by statute, MCL 763.1. The right of self-representation is also implicitly guaranteed by the Sixth Amendment to the United States Constitution. *People v Anderson*, 398 Mich 361, 366; 247 NW2d 857 (1976). To invoke the right to self-representation: (1) a defendant must make an unequivocal request to represent himself; (2) the trial court must determine the desire to proceed without counsel is knowing, intelligent, and voluntary, and (3) the trial court must "determine that the defendant's acting as his own counsel will not disrupt, unduly inconvenience and burden the court and the administration of the court's business." *Id.* at 367-368. "[C]ourts are to make every reasonable presumption against the waiver of a

fundamental constitutional right, including the waiver of the right to the assistance of counsel.” *Russell*, 471 Mich at 188. The denial of a defendant’s Sixth Amendment right of self-representation constitutes a structural error requiring automatic reversal. *People v Anderson (After Remand)*, 446 Mich 392, 405; 521 NW2d 538 (1994).

Having reviewed the record, we find the trial court did not err in denying defendant’s request to represent himself. We find that defendant’s only request to represent himself came at his competency hearing, but this request followed immediately after the trial court denied his then-appointed attorney’s motion to withdraw. Further, this request must be viewed in light of defendant’s motion, filed in propria persona. Before the competency hearing, during which defendant claimed that although he wanted to represent himself, he also asked for co-counsel. “[T]he right of self-representation and the right to counsel are mutually exclusive, a defendant must elect to conduct his own defense.” *Russell*, 471 Mich at 189. Sometime after the competency hearing, defendant indicated in a letter to the trial court that he wanted counsel but wanted someone other than his then-appointed attorney. The trial court acquiesced and appointed another attorney. Further, on the first day of trial, defendant failed to unequivocally state his desire to represent himself even though he had the opportunity to do so. Defendant’s discussion of self-representation at that time involved his recitation, in the past tense, of what he believed he had previously requested and did not reflect a present desire to represent himself. Because assertion of the right of self-representation necessarily requires a knowing, voluntary, and intelligent waiver of the right to counsel, a waiver which courts are to make every reasonable presumption against, *Russell*, 471 Mich at 188, a trial court “should not allow a defendant to proceed without counsel if any doubt casts a shadow on the waiver’s validity.” *People v Brooks*, ___ Mich App ___, ___ NW2d ___ (Docket No. 298299, issued August 16, 2011), slip op at 7. We find defendant’s conduct both before and after his request to represent himself at the competency hearing created doubt regarding the nature of his request to represent himself. Consequently, because defendant’s request to represent himself was not unequivocal, we find the trial court did not abuse its discretion in denying defendant’s request to represent himself.

We affirm.

/s/ Jane E. Markey
/s/ E. Thomas Fitzgerald
/s/ Stephen L. Borrello